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December 6, 1995

DEC 6 1995

HAND DELIVER

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

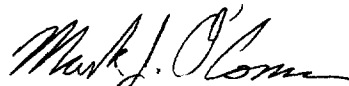
Re: Omnipoint PCS Entrepreneurs, Inc.
PP Docket No. 93-253
Ex Parte Presentation

Dear Mr. Caton:

In conformity with section 1.1206(a) of the Commission's Rules, enclosed please find two copies of an *ex parte* presentation for inclusion in the above-referenced docket.

Should you have any questions concerning this matter, please contact the undersigned directly.

Sincerely,



Mark J. O'Connor
Counsel for Omnipoint PCS
Entrepreneurs, Inc.

/mjo
Enclosures

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HAND DELIVERY

Kathleen Ham-O'Brien
Chief, Auctions Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, Room # 5202
Washington, D.C. 20554

Re: *Ex Parte* Presentation -- PP Docket No. 93-253
Bid Withdrawal Rules for PCS Block C Auction

Dear Ms. Ham-O'Brien:

On behalf of Omnipoint PCS Entrepreneurs, Inc. ("Omnipoint"), a prospective bidder in the upcoming PCS Block C auction, we request that the Commission clarify certain rules pertaining to bid withdrawal penalties.

According to Omnipoint representatives attending the Commission's Block C bidding seminar on November 29, 1995, Commission staff clarified to the approximately 200 attendees how the bid withdrawal penalties would be assessed. Specifically, Commission staff responded to this example: Bidder A is the high bidder in a market, but withdraws its bid. In a later round of the auction, in the same market, Bidder B submits a bid higher than that of Bidder A's withdrawn bid, but then withdraws it and there is no final, winning bid for that license at the end of the auction. As we understand it, Commission staff informed bidding seminar participants that the Commission would not assess a penalty against Bidder A.

Omnipoint believes that the bid withdrawal procedures for the Block C auction suggested by Commission staff would serve the public interest. Relieving Block C bidders from bid withdrawal penalties, after another bidder has established a higher bid, would minimize auction costs on small and entrepreneurial businesses. More

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importantly, it allows bidders to proceed during the auction knowing how much penalty they are exposed to, rather than the uncertainty of never knowing if another party will withdraw at the very end and penalize them as well. For example, extracting two or more separate 20% bid withdrawal penalty deposits from Block C bidders seems excessive and unnecessary to adequately ensure that the Commission recovers fair value for the re-auctioned license. *See*, Supplemental Bidder's Package, at p. 39. Because the last withdrawing bidder would still be held responsible for a bid withdrawal penalty, there should be no negative fiscal impact on the recovery of auction revenues, and so two or more small businesses should not have their limited resources needlessly tied up during the re-auctioning process.

Omnipoint requests clarification of the bid withdrawal procedures because the procedures outlined in the bidders' could be interpreted as being inconsistent with 47 C.F.R. § 1.2104(g)(1), which states that "[a] bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference of the amount bid and the amount of the winning bid the next time the license is offered by the Commission." *See also*, 47 C.F.R. § 24.704(a)(1) (same). In addition, the Commission considered this situation in the Second Report and Order, 9 FCC Rcd. 2348, 2373, n.114 (1994) (copy attached), and found that "each bidder who withdraws is responsible for its bid." Of course, the Commission has the discretion to alter its auction procedures to suit the needs of each auction. *See, e.g.*, Second Report and Order, 9 FCC Rcd. at 2372-73 (FCC reserves flexibility to adjust activity rules and waivers); *id.* at 2383-84 (same with respect to minimum bid increments and default, re-auction procedures).

Further, Omnipoint requests that the Commission clarify how the bid withdrawal rule suggested by staff would allocate penalties in the case where the subsequent withdrawn bid is less than the first withdrawn bid. For example, suppose that the following bidding occurs on a single license during the course of the auction: Bidder A makes a high bid of 110 in round 9; Bidder B makes a high bid of 150 in round 10 and withdraws in the same round; Bidder B makes a high bid of 125 in round 15 and withdraws in the same round; Bidder C bids 100 in the final round and wins the license. Omnipoint believes that, consistent with its suggested bid withdrawal rule, the Commission's total penalty for the license should be 50, with a penalty of 25 to Bidder A and 25 to Bidder B.

In light of the significance of bid withdrawal liability for Block C auction participants, we request that the Commission provide written clarification of this issue.

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In accordance with the Commission's *ex parte* rules, two copies of this letter will be submitted with the Commission's Secretary's Office.

Sincerely,



Mark J. O'Connor
Counsel for Omnipoint PCS
Entrepreneurs, Inc.

cc: Amy Zoslov (Auction Div./FCC)
Sue McNeil (Auction Div./FCC)
Louis Sigalos (Auction Div./FCC)
Jackie Chorney (Wireless Bur./FCC)
Andrew Sinwell (OPP/FCC)
James Hedlund (Auction Div./FCC)